

REMARKS

Applicant respectfully traverses and objects to the designation of the 3/6/07 office action as final, such being a first communication following the RCE transmittal, it being submitted that the conditions necessary under MPEP Sect. 707.07(b) for such action are not met, in that the claims as amended in the RCE are not such that they could have been finally rejected on the grounds and art of record. Withdrawal of the designation of the last office action as final is requested.

Applicant has previously amended the claim language and specification to better define element 46 as a projecting post rather than as a hub. This structure is important as the solid body post increases the thickness of the end wall of the cap at the location where the needle piercing tip is received. This is important since in the pre-use configuration the needle is received by the end wall on a first side, and then is received in generally the same axial location on its second side (within the opening) when the needle is covered for disposal post-use. The increased thickness also insures that a greater portion of the needle is embedded, thus better securing the cap onto the lancet body.

It is submitted that rejection of the claims as anticipated by Morita under Sect. 102(b) is not justified. As is set forth in MPEP Section 2131, a claim is anticipated under Sect. 102 "only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Independent claim 1 requires “an interior axially projecting post disposed within said opening of said cap, whereby said needle piercing tip is embedded with said interior axially projecting post in said pre-use configuration” and further requires that “in a post-use configuration ... said cap is mounted onto said lancet body with said opening of said cap receiving said lancet distal end and at least a portion of said piercing tip embedded within said axially projecting post.”

Morita lacks an interior projecting post disposed within the opening of the cap. Instead, Morita discloses an elongated recess 42 disposed opposite to the opening 28 (col. 6, line 19). The piercing tip 16 of Morita is not disposed within the opening 28 in the pre-use configuration, but is instead disposed within the body of the cap itself or within a flange member that is not an interior axially projecting post. Thus, it does not anticipate the elements as set forth in lines 7-9 of claim 1. In the post-use configuration with the cap 14 mounted onto the lancet body 20, the piercing tip 16 of Morita extends into the recess 42 and is embedded in the closed bottom 30. The structure of Morita is the opposite of that of claim 1, in that the recess 42 produces a lesser thickness to receive the needle, whereas the post of the claim produces a greater thickness. Thus, Morita does not anticipate the elements as set forth in lines 11-15.

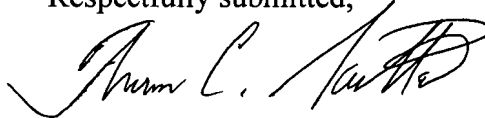
Independent claim 5 requires a cap connected to the lancet body with the “piercing tip embedded therein by a frangible junction” (lines 3-4), with the “cap comprising an opening facing in the distal direction away from said lancet body” (lines 4-5). As illustrated in Figures 3, 4, 7, 8 and 11 of Morita, when the piercing tip 16 is embedded in the cap 14, the opening 28 does not face in the distal direction away from the lancet body. Instead the opening 28 faces in the lateral or radial direction transverse to the proximal-distal direction axis. Independent claim 11

contains language similar to that quoted above in claim 5, and the same rationale applies that Morita does not anticipate the elements set forth therein.

Independent claim 18 requires a "cap being generally cylindrical and coaxially aligned with said shaft prior to separation of said frangible junction and removal" (line 7-9). In Morita, the cap is not coaxially aligned with the needle shaft prior to its removal from the lancet body.

It is respectfully submitted that the claims as now presented are patentable over the cited prior art, on the basis of the above remarks, and reconsideration and subsequent passage for allowance is hereby requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas C. Saitta", written over a horizontal line.

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